

II. REMARKS

United States Serial No. 10/811,096 was filed on March 26, 2004.

Restriction Requirement

The Office Action requires restriction under 35 U.S.C. §121 to one of the following inventions:

Group I: Claims 1-15, 31 and 74-89, drawn to a method of making a colored cement, classified in class 264, subclass 333;

Group II: Claims 16-30, 32-46 and 58-73, drawn to a colored cement composition, classified in class 106, subclass 713+; and

Group III: Claims 47-57 and 90, drawn to a liquid coloring composition, classified in class 563, subclass 887+.

Applicants hereby elect to prosecute the claims of Group III (claims 47-57 and 90) in the present application, and respectfully traverse the restriction requirement between Groups I and III.

It is alleged that the claims of Groups I and III are unrelated, because the liquid coloring composition of Group III can be used to color paints or plastics and is not limited to addition to cement. Applicants respectfully submit that this allegation is legally incorrect.

Inventions are unrelated only if it can be shown that (1) they are not capable of use together and (2) they have different designs, modes of operation and effects. Thus, in order to be unrelated, inventions must satisfy both parts of this two-part test. It has not been demonstrated that the liquid coloring composition of Group III is not capable of use in the method of making a colored cementitious composition of Group I.

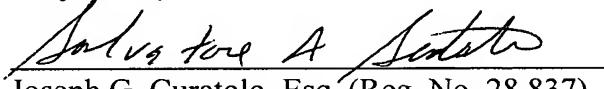
The claims of Group I are directed to a method for making a colored cementitious composition comprising forming a mixture of cement and a liquid coloring composition. The claims of Group III are directed to a liquid coloring composition. Page 3 of the Restriction Requirement concedes that the liquid coloring composition may be used to color cement. Thus, the liquid coloring composition of Group III is, in fact, capable of use with the method of Group I. Given the fact that the liquid coloring composition and the method are capable of use together, it is not relevant that the liquid coloring composition may also be used to color paints or plastics.

In view of the above remarks, Applicants respectfully submit that restriction between Groups I and III is not proper, that the restriction requirement be withdrawn, and that the claims of Groups I and III be rejoined for prosecution in the present application. In the event that the Examiner does not rejoin the claims of Groups I and III for prosecution in the present application, Applicants hereby reserve the right to file the claims of Group I in one or more divisional applications. Applicants also reserve the right to file the claims of Group II in one or more divisional applications.

Should there be any questions regarding the present response Applicants' undersigned attorney would welcome a telephone call.

Respectfully submitted,

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